

Senate Bill No. 1274

Passed the Senate August 21, 2014

Secretary of the Senate

Passed the Assembly August 7, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 42986, 42987, 42987.1, 42989.1, 42990, 42991, 42993.1, 42993.2, 42993.3, and 42993.4 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, Hancock. Recycling: used mattresses.

(1) Existing law, the Used Mattress Recovery and Recycling Act, requires a mattress recycling organization to be established by a qualified industry association to develop, implement, and administer a mattress recycling program, including the development of a state plan by July 1, 2015, for recycling used mattresses in the state that includes specified goals and elements. The plan is required to include an element that ensures that urban and rural local governments and participating solid waste facilities that accept mattresses are provided with a mechanism for the recovery of illegally disposed used mattresses that is funded at no additional cost to the local government or solid waste facility, as provided.

This bill would require that element to ensure that urban and rural local governments and participating permitted solid waste facilities and authorized solid waste operations that accept mattresses are provided with the above mechanism.

Existing law also requires the plan to include a provision that allows an individual to drop off a mattress, at no charge, at a mattress recycling center, permitted solid waste facility, or other municipal facility that accepts mattresses, and for the payment of a reasonable amount to that municipal or solid waste facility.

This bill would require the plan to allow an individual to also drop off a mattress at a recycler, renovator, authorized solid waste operation, or other municipal facility that accepts mattresses consistent with solid waste regulations. The bill would also require the payment amount to be determined as reasonable by the municipal facility or solid waste facility or operation and the mattress recycling organization.

The bill would also, for purposes of the act, make a clarifying change to the definition of a solid waste facility.

(2) The act requires, commencing 90 days after the date the department approves or conditionally approves the mattress recycling plan, each manufacturer, renovator, retailer, or distributor that sells a mattress to add a charge to the purchase price of the mattress, as provided. Existing law requires the department to approve or disapprove a final used mattress recycling program budget.

This bill would instead require, commencing 90 days after the date the department approves the budget, each manufacturer, renovator, retailer, or distributor that sells a mattress to add a charge to the purchase price of the mattress, as provided.

(3) The act requires the mattress recycling organization to arrange for an audit conducted by an independent certified public accountant to be delivered to the department, allows the mattress recycling organization to obtain copies of that audit, and prohibits the department from disclosing any confidential proprietary information in the audit. The department is authorized to conduct its own audit if it determines that an audit is necessary. The act also requires a mattress recycler or mattress renovator to submit a report by July 1, 2017, and each year thereafter to the department, which the department is required to make public.

This bill would in addition prohibit the department from disclosing any confidential proprietary information in the audit that the department is authorized to conduct, would instead allow the mattress recycling organization to obtain copies of that audit, and would also prohibit the department from disclosing this confidential information in the annual report submitted by recyclers and renovators. The bill would require the report to be submitted by May 1, 2017, and each year thereafter and would require the report to also be submitted to the mattress recycling organization.

(4) The act authorizes the department to impose an administrative civil penalty on a manufacturer, organization, recycler, renovator, or retailer in violation of the act and to take other specified enforcement actions. The department is required to deposit these penalties into the Mattress Recovery and Recycling Penalty Account, which is available for expenditure by the department, upon appropriation by the Legislature, to implement and enforce the act and for offsetting certain costs reimbursed by the mattress recycling organization.

This bill would additionally authorize the department to impose civil penalties on distributors and to take those specified enforcement actions against distributors and recyclers. The bill would delete the authorization for the expenditure of these penalties to offset those reimbursed costs. The bill would also make technical and clarifying changes.

(5) Existing law authorizes the department to adopt emergency regulations relating to the used mattress recovery and recycling plan and the program budget. Existing law prohibits the department from adopting regulations with regard to any other provision of the act.

This bill would prohibit the department from adopting emergency regulations with regard to any other provision of the act.

The people of the State of California do enact as follows:

SECTION 1. Section 42986 of the Public Resources Code is amended to read:

42986. For purposes of this chapter, the following definitions shall apply:

(a) (1) “Consumer” means an owner of a mattress, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity, and including the ultimate purchaser, owner, or lessee of a mattress.

(2) “Consumer” does not include a government organization or other party that obtains one or more used mattresses in the course of collecting used mattresses for recycling for purposes of this chapter, or through the ordinary collection and handling of municipal solid waste.

(b) “Distributor” means a company that has a contractual relationship with one or more manufacturers to market and sell mattresses to retailers.

(c) “Foundation” means a ticking-covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.

(d) “Good faith effort” means all reasonable and economically practical efforts by a mattress recycling organization to implement the components identified in its approved plan consistent with its annual budget.

(e) “Importer” means a party qualifying as an “importer of record” for purposes of Section 1484(a)(2)(B) of Title 19 of the United States Code, with regard to the import of a finished mattress sold in the state that was manufactured or assembled by a company outside the United States.

(f) (1) “Manufacturer” means any of the following:

(A) The person who manufactures a mattress and who sells, offers for sale, or distributes a mattress in the state.

(B) If there is no person who is a manufacturer of a mattress for purposes of subparagraph (A), the manufacturer is the person who imports the mattress into the state for sale or distribution.

(2) Except as provided pursuant to paragraph (2) of subdivision (b) of Section 42987, a retailer that brings a mattress into its store locations from an out-of-state warehouse or distribution center is not a manufacturer.

(g) (1) “Mattress” means a resilient material or combination of materials that is enclosed by a ticking, is used alone or in combination with other products, and is intended for or promoted for sleeping upon.

(2) “Mattress” includes a foundation and a renovated mattress or renovated foundation.

(3) “Mattress” does not include the following:

(A) An unattached mattress pad or unattached mattress topper, including items with resilient filling, with or without ticking, intended to be used with or on top of a mattress.

(B) A sleeping bag or pillow.

(C) A car bed, crib, or bassinet mattress.

(D) Juvenile products, including a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, or crib bumper, and the pads for those juvenile products.

(E) A product containing liquid- and gaseous-filled ticking, including a water bed and air mattress that does not contain upholstery material between the ticking and the mattress core.

(F) Upholstered furniture that does not otherwise contain a detachable mattress or that is a fold out sofa bed or futon.

(h) “Mattress recycling organization” or “organization” means an organization exempt from taxation under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code of 1986, that is established by a qualified industry association, composed of manufacturers, renovators, and retailers, and certified pursuant to

Section 42987, to develop, implement, and administer the mattress recycling program established pursuant to this chapter.

(i) “Used mattress recovery and recycling plan” or “plan” means the plan for recycling used mattresses that is developed by the mattress recycling organization pursuant to this chapter.

(j) “Program” or “used mattress recycling program” means the program implemented by the mattress recycling organization pursuant to a plan approved by the department.

(k) “Qualified industry association” means the International Sleep Products Association or a successor of that organization, or a group of mattress manufacturers that collectively represent at least 35 percent of the volume of mattresses manufactured in the United States.

(l) “Recycle” or “recycling” has the same meaning as defined in Section 40180.

(m) “Recycler” means a person that engages in the manual or mechanical separation of mattresses to substantially recover components and commodities contained in mattresses for the purpose of reuse or recycling.

(n) “Recycling charge” or “charge” means the charge imposed on the sale of a new or renovated mattress at the point of sale and collected by the organization to fund the recycling of used mattresses pursuant to this chapter.

(o) (1) “Renovate” or “renovation” means altering a used mattress for the purpose of resale and includes one or more of the following:

(A) Replacing the mattress, ticking, or filling.

(B) Adding additional filling.

(C) Rebuilding a used mattress.

(D) Replacing components with new or postconsumer materials unless the material is a clean recycled material, consists of used electronic parts or controls, or is a used mattress base that is not covered by ticking.

(2) “Renovate” or “renovation” does not include any of the following:

(A) Stripping a mattress of its ticking or filling without adding new material.

(B) Sterilizing or sanitizing a mattress without otherwise altering the mattress.

(C) Altering a mattress by a renovator when a person retains the altered mattress for lease, rental, or personal use.

(D) Refurbishing that disqualifies a mattress for a yellow wholesale renovator tag to be affixed to the mattress, in accordance with the regulations adopted by the Department of Consumer Affairs.

(p) “Renovator” means a person who renovates used mattresses for the purpose of sale, or offering for sale, in this state.

(q) “Retailer” means a person who sells mattresses in the state or offers to a consumer a mattress in the state through any means, including, but not limited to, by remote offering, including sales outlets or catalogs, electronically through the Internet, by telephone, or through the mail.

(r) “Sale” or “sell” means the transfer of title of a mattress for consideration, including by a manufacturer, a distributor, or a retailer for eventual consumption to a consumer in the state, including remote sales conducted through sales outlets, catalogs, or the Internet or any other similar electronic means. For purposes of this chapter, a long-term lease of not less than 12 months is the same as a sale.

(s) “Solid waste facility” means, for purposes of this chapter, a solid waste facility as defined in Section 40194 that accepts, under its normal operating conditions, used mattresses from the public for collection, storing, and handling, whether for recycling or disposal.

(t) (1) “Ticking” means the outermost layer of fabric or related material of a mattress.

(2) “Ticking” does not include another layer of fabric or related material that is quilted together with, or otherwise attached to, the outermost layer of fabric or related material.

(u) “Used mattress” means a mattress that has been abandoned or discarded by a consumer.

SEC. 2. Section 42987 of the Public Resources Code is amended to read:

42987. (a) (1) A qualified industry association or a successor organization may establish a mattress recycling organization for purposes of this chapter, which shall be composed of manufacturers, renovators, and retailers and be certified pursuant to this section to develop, implement, and administer the mattress recycling program established pursuant to this chapter.

(2) Within 60 days of receipt of a request for certification, the department shall notify the requesting qualified industry association of the department's decision whether or not to certify that a mattress recycling organization has been established by the qualified industry association or successor organization and is composed of manufacturers, renovators, and retailers for purposes of establishing the mattress recycling plan.

(3) Prior to certification by the department, the department's director shall appoint an advisory committee to be part of the mattress recycling organization.

(A) The advisory committee may be comprised of members of the environmental community, solid waste industry, local government, and public and private representatives involved in the collection, processing and recycling of used mattresses, and other interested parties.

(B) The mattress recycling organization shall consult the advisory committee at least once during the development and implementation of the plan required pursuant to Section 42987.1, and annually prior to the submittal of both an annual report required pursuant to Section 42990.1 and an annual budget required pursuant to Section 42988.

(b) (1) Each manufacturer, retailer, and renovator shall register with the mattress recycling organization.

(2) A retailer may register with the mattress recycling organization as a manufacturer for a brand for which there is not a registered manufacturer.

(c) On and after January 1, 2016, a retailer shall not sell, distribute, or offer for sale a mattress in the state unless the retailer is in compliance with this chapter and the manufacturer or renovator of the mattress sold by the retailer is listed in compliance with this chapter.

(d) On and after January 1, 2016, a manufacturer or renovator shall not sell, offer for sale, or import a mattress in this state, or sell or distribute a mattress to a distributor or retailer, unless the manufacturer or renovator is in compliance with this chapter.

SEC. 3. Section 42987.1 of the Public Resources Code is amended to read:

42987.1. On or before July 1, 2015, the mattress recycling organization shall develop and submit to the department a plan for recycling used mattresses in the state in an economically efficient

and practical manner that includes all of the following goals and elements:

(a) Program objectives consistent with the state's solid waste management hierarchy.

(b) The names of manufacturers, renovators, and brands covered under the plan.

(c) A consultation process with affected stakeholders, including, but not limited to, local government representatives, recyclers, and solid waste industry representatives.

(d) Methods to increase the number of used mattresses diverted from landfills, reduce the number of illegally dumped used mattresses, and increase the quantity of used materials recovered through this process and recycled for other uses.

(e) (1) The establishment and administration of a means for funding the plan in a manner that distributes the mattress recycling organization's costs uniformly over all mattresses sold in the state.

(2) The funding mechanism shall provide sufficient funding for the mattress recycling organization to carry out the plan, including the administrative, operational, and capital costs of the plan.

(f) The publishing of an annual report for each calendar year of operation.

(g) Conducting research, as needed, related to improving used mattress collection, dismantling, and recycling operations, including pilot programs to test new processes, methods, or equipment on a local, regional, or otherwise limited basis.

(h) A program performance measurement that shall collect program data for the purpose of the annual report. The information shall include:

(1) A methodology for estimating the amount of mattresses sold in the state, used mattresses available for collection in the state, and for quantifying the number of used mattresses collected and recycled in the state.

(2) A methodology for determining mattresses sold in the state by the manufacturers and renovators of the mattress recycling organization.

(i) A description of methods used to coordinate activities with existing used mattress collecting and recycling programs, including existing nonprofit mattress recyclers, and with other relevant parties as appropriate, with regard to the proper management or recycling of discarded or abandoned mattresses, for purposes of providing

the efficient delivery of services and avoiding unnecessary duplication of effort and expense.

(j) Entering into contracts or agreements, which may include contracts and agreements with existing nonprofit or for-profit recyclers, that are necessary and proper for the mattress recycling organization to carry out these duties consistent with the terms of this chapter.

(k) Establishment of a financial incentive to encourage parties to collect for recycling used mattresses discarded or illegally dumped in the state.

(l) Ensuring, to the maximum extent possible, that urban and rural local governments and participating permitted solid waste facilities and authorized solid waste operations that accept mattresses are provided with a mechanism for the recovery of illegally disposed used mattresses that is funded at no additional cost to the local government, solid waste facility, or solid waste operation.

(m) Developing processes to collect used mattresses from low-income communities for recycling in accordance with the poverty line annually established by the Secretary of California Health and Human Services pursuant to the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended.

(n) Providing outreach efforts and education to consumers, manufacturers, and retailers, for the purpose of promoting the recycling of used mattresses and options available to consumers for the free dropoff of used mattresses.

(o) A provision that allows an individual to drop off, at no charge, a mattress at a recycler, renovator, mattress recycling center, permitted solid waste facility, authorized solid waste operation, or other municipal facility that accepts mattresses consistent with state solid waste regulations, and that provides for the payment to a municipal or solid waste facility or operation that accepts mattresses an amount determined by the municipal or solid waste facility or operation and the mattress recycling organization to be reasonable for accepting, collecting, storing, transporting, and handling used mattresses.

(p) Ensuring that the impact of Article XIII C of the California Constitution is addressed for local governments participating in the program.

(q) A report from the advisory committee, established pursuant to paragraph (3) of subdivision (a) of Section 42987, which includes a summary of the consultative process between the advisory committee and the mattress recycling organization during the development of the plan, as well as any other information deemed pertinent by the advisory committee to maximizing the recovery and recycling of used mattresses in the state.

(r) Other information requested by the department that is reasonably related to compliance with the recycling plan and that the organization can reasonably compile.

SEC. 4. Section 42989.1 of the Public Resources Code is amended to read:

42989.1. (a) Commencing 90 days after the date the department approves the budget pursuant to Section 42988.1, each manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer or to the ultimate end user of the mattress in the state shall add the charge to the purchase price of the mattress and shall remit the charge collected to the mattress recycling organization.

(b) In each transaction described in subdivision (a), the charge shall be clearly visible on the invoice, receipt, or functionally equivalent billing document provided by the seller to the consumer as a separate line item.

(c) The mattress recycling organization shall develop reimbursement criteria to enable retailers to recover administrative costs associated with collecting the charge.

(d) The mattress recycling organization shall determine the rules and procedures that are necessary and proper to implement the collection of the charge in a fair, efficient, and lawful manner.

SEC. 5. Section 42990 of the Public Resources Code is amended to read:

42990. (a) The mattress recycling organization shall keep minutes, books, and records that clearly reflect the activities and transactions of the mattress recycling organization.

(b) The accounting books of the mattress recycling organization shall be audited at the organization's expense by an independent certified public accountant retained by the organization at least once each calendar year.

(c) The mattress recycling organization shall arrange for the audit to be delivered to the department, along with the annual

report required pursuant to Section 42990.1. The department shall review the audit for compliance with this chapter and consistency with the plan created pursuant to this chapter. The department shall notify the mattress recycling organization of any compliance issues or inconsistencies. The department shall not disclose any confidential proprietary information in the audit.

(d) The department may conduct its own audit if it determines that an audit is necessary to enforce the requirements of this chapter and that the audit conducted pursuant to subdivision (b) is not adequate for this purpose. The mattress recycling organization may obtain copies of the audit upon request. The department shall not disclose any confidential proprietary information in the audit.

SEC. 6. Section 42991 of the Public Resources Code is amended to read:

42991. (a) On or before May 1, 2017, and annually thereafter, a person that is engaged in business as a recycler or renovator shall submit to the department and to the mattress recycling organization a report that includes the following:

(1) Quantitative information on the number of mattresses received and recycled or renovated in the state during the preceding calendar year.

(2) Other information deemed necessary by the department that is reasonably related to compliance with this chapter and that can be reasonably compiled.

(b) For purposes of determining the used mattress recycling rate, on or before May 1, 2017, and annually thereafter, an operator of a solid waste facility or operation shall report to the department and to the mattress recycling organization, in a form and manner determined by the department, regarding the number of used mattresses received by that facility or operation that were recycled, renovated, or disposed of within the state in the preceding calendar year.

(c) The department shall make the information provided pursuant to this section available to interested parties and to the public. The department shall not disclose any confidential proprietary information.

SEC. 7. Section 42993.1 of the Public Resources Code is amended to read:

42993.1. (a) The department may impose an administrative civil penalty on any manufacturer, mattress recycling organization,

distributor, recycler, renovator, or retailer that is in violation of this chapter. The amount of the administrative civil penalty shall not exceed five hundred dollars (\$500) per day, but, if the violation is intentional, knowing, or reckless, the department may impose an administrative civil penalty of not more than five thousand dollars (\$5,000) per day.

(b) The department shall not impose a penalty on the mattress recycling organization pursuant to this section for a failure to comply with this chapter if the organization demonstrates it received false or misleading information from a member of the organization or other party that was the direct cause of its failure to comply.

(c) The department shall deposit all penalties collected pursuant to this section into the Mattress Recovery and Recycling Penalty Account, which is hereby created in the Used Mattress Recycling Fund. Upon appropriation by the Legislature, moneys deposited into the Mattress Recovery and Recycling Penalty Account shall be expended by the department to administer and enforce this chapter.

SEC. 8. Section 42993.2 of the Public Resources Code is amended to read:

42993.2. Upon a written finding that a manufacturer, mattress recycling organization, renovator, distributor, recycler, or retailer has not met a material requirement of this chapter, in addition to any other penalties authorized under this chapter, the department may take any of the following actions, after affording the manufacturer, organization, renovator, distributor, recycler, or retailer a reasonable opportunity to respond to, or rebut, the finding, to ensure compliance with the requirements of this chapter:

(a) Revoke the mattress recycling organization's plan approval or require the mattress recycling organization to resubmit the plan.

(b) Remove the manufacturer or renovator from the department's Internet Web site and list of compliant manufacturers and renovators, as specified in Section 42993.

(c) Require additional reporting requirements relating to compliance with the material requirement identified by the department.

SEC. 9. Section 42993.3 of the Public Resources Code is amended to read:

42993.3. (a) A manufacturer, renovator, distributor, recycler, retailer, and mattress recycling organization shall do both of the following:

(1) Upon request, provide the department with reasonable and timely access, as determined by the department and as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, to its facilities and operations, as necessary to determine compliance with this chapter.

(2) Upon request, provide the department with relevant records necessary to determine compliance with this chapter.

(b) The records required by this chapter shall be maintained and accessible for three years. All reports and records provided to the department pursuant to this chapter shall be provided under penalty of perjury.

(c) The department may take disciplinary action against a manufacturer, renovator, distributor, recycler, retailer, or mattress recycling organization if the manufacturer, renovator, distributor, recycler, retailer, or mattress recycling organization fails to provide the department with the access required pursuant to this section, including, but not limited to, imposing penalties pursuant to Section 42993.1 and posting an immediate notice on the department's Internet Web site pursuant to Section 42993 that the manufacturer or renovator is no longer in compliance with this chapter.

SEC. 10. Section 42993.4 of the Public Resources Code is amended to read:

42993.4. (a) (1) The department may adopt emergency regulations to implement this chapter with regard to establishing a process for the submission of the used mattress recovery and recycling plan to the department, and the approval of that plan, pursuant to Section 42987.3 and for the submission of the proposed used mattress recycling program budget to the department, and the approval of the budget by the department, pursuant to Sections 42988 and 42988.1.

(2) The department shall not adopt emergency regulations pursuant to this section with regard to any other provision of this chapter.

(3) This section does not limit the department's authority to adopt regulations pursuant to Section 40502.

(b) The emergency regulations adopted pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing

with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with the Office of Administrative Law.

Approved _____, 2014

Governor